

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

LELONE TUCKER,	:	Case No. 1:18-cv-821
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	Magistrate Judge Stephanie K. Bowman
vs.	:	
	:	
SPRINGFIELD TOWNSHIP POLICE	:	
DEPARTMENT, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**DECISION AND ENTRY  
ADOPTING IN PART THE REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 28) AND  
RECOMMITTING THE CASE TO THE MAGISTRATE JUDGE  
FOR A FURTHER REPORT AND RECOMMENDATION**

This case is before the Court pursuant to the Order of General Reference to United States Magistrate Judge Stephanie K. Bowman. On November 26, 2018, Plaintiff LeLone Tucker filed a complaint on behalf of herself and her deceased son, Jermaine Tucker, under 42 U.S.C. § 1983. (Doc. 1). Plaintiff’s complaint seeks relief against Defendants Springfield Township Police Department, Elmwood Fire Department, and the Hamilton County Coroner related to her son’s death in a car accident in 2017. (*Id.*). On December 3, 2019, this Court entered a Decision and Entry adopting the Magistrate Judge’s Report and Recommendation, dismissing Plaintiff’s claims against the County Coroner. (Doc. 27). Then, on December 23, 2019, the Magistrate Judge issued a second Report and Recommendation recommending dismissal of the remaining Defendants—the Springfield Township Police Department and the Elmwood Fire Department. (Doc. 28).

Plaintiff filed objections on January 23, 2020, after being granted an extension of time to do so. (Doc. 31).

**A. Defendant Springfield Township Police Department**

On June 10, 2019, Defendant Springfield Township Police Department filed a motion for judgment on the pleadings. (Doc. 15). Plaintiff failed to timely respond to the motion, prompting the Court to order Plaintiff to show cause as to why the Defendants' motion should not be construed as unopposed and granted for the reasons stated therein. (Doc. 18). Plaintiff responded to the show cause order and was granted an extension of time to respond to Defendant's motion. (Doc. 20). However, the new deadline passed without a responsive pleading from Plaintiff. Consequently, on December 23, 2019, the Magistrate Judge issued a Report and Recommendation recommending that this Court dismiss Plaintiff's claims against Defendant Springfield Township Police Department for failure to comply with the Court's show cause order and failure to prosecute. (Doc. 28 at 2).

Plaintiff filed objections to the second Report and Recommendation on January 23, 2020. (Doc. 31). The objections lay out the tragic facts of this case, however, they fail to address in any way the deficiencies noted in the Report and Recommendation, including Plaintiff's failure to respond to the Court's show cause order and failure to respond to the Springfield Township Police Departments' motion for judgment on the pleadings. Accordingly, the Magistrate Judge's recommendation that Defendant

Springfield Township Police Department be dismissed for lack of prosecution is

**ADOPTED.**

**B. Defendant Elmwood Fire Department**

The Report and Recommendation also recommends that Plaintiff's claims against Defendant Elmwood Fire Department be dismissed for failure to prosecute and failure to comply with the Court's show cause orders. (Doc. 28 at 2-3). After service to the Elmwood Fire Department was returned unexecuted, the Magistrate Judge, on May 9, 2019, ordered Plaintiff to provide a valid service address and completed services forms for purposes of reissuing service of the complaint to the Fire Department. (Doc. 13). Plaintiff complied with this Order by providing new completed service forms with a new address for the Defendant. (*See* Doc. 16). Yet, on August 12, 2019, notice was once again filed on the docket indicating that service of the complaint was returned unexecuted as to Defendant Elmwood Fire Department. (Doc. 21). This time, the return form included a note stating that service was initially accepted by the Cincinnati Fire Department, but that service was subsequently returned to the United States Marshals Service specifying that process should be directed to the *Elmwood* Fire Department and not the *Cincinnati* Fire Department. (*Id.*; Doc. 22 at 2). Following this second failed attempt, the Court afforded Plaintiff a third and final opportunity to provide a valid service address for the Elmwood Fire Department. (Doc. 22).

On September 10, 2019, Plaintiff supplied yet another summons and service form, seemingly directing service to "Engine Number 2, Cincinnati Fire Department" (and not

the “Elmwood Fire Department” as instructed on the prior unexecuted return form). (Docs. 23, 24). Nevertheless, on September 12, 2019, the Magistrate Judge issued an order stating that Plaintiff complied with the show cause order by provided a “new service address” and ordered the Marshals to attempt service for a third time. (Doc. 23).

Then, on December 23, 2019, the Magistrate Judge issued the instant Report and Recommendation describing Plaintiff’s repeated failure to provide a valid address for the Elmwood Fire Department and recommending dismissal of the Fire Department for lack of prosecution and failure to comply with the Court’s show cause order. (Doc. 28 at 2-3). The Report and Recommendation specifically notes Plaintiff’s failure to comply with the Court’s August 13, 2019 Order to provide a valid service address. However, the Magistrate Judge’s subsequent September 12, 2019 Order notes Plaintiff’s compliance with the August 13th Order, stating, “On September 10, 2019, the Clerk of Court received completed service forms for Defendant Elmwood Fire Department which contain a new service address for this Defendant. Accordingly, the Court finds that Plaintiff has satisfied the requirements of its prior Order.” (Doc. 23).

Moreover, after the Report and Recommendation was entered, Plaintiff’s final attempt at serving the Elmwood Fire Department, issued on September 12, 2019, was returned “executed,” with return of service filed in the record on January 14, 2020. (Doc. 30). The return receipt indicates that service was accomplished via certified mail, and that although the “green card” was not returned, online tracking shows that service was accepted by an individual on October 2, 2019. (*Id.*). Because this development occurred

after the issuance of the Report and Recommendation, the status of service to Defendant Elmwood Fire Department will be more appropriately resolved after further analysis by the Magistrate Judge.<sup>1</sup> Accordingly, pursuant to Federal Rule of Civil Procedure 72(b)(3), this matter is hereby **RECOMMITTED** to the Magistrate judge with instructions to file a supplemental report concerning Plaintiff's final attempt at serving Defendant Elmwood Fire Department and to make recommendations based on that analysis.

### **C. Conclusion**

The Court has reviewed the comprehensive findings of the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b) and has considered *de novo* all of the filings in this matter. Accordingly, the Court does determine that the Report and Recommendation (Doc. 28) should be and is hereby **ADOPTED in part** as follows:

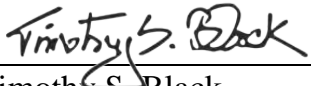
- 1) Defendant Springfield Township Police Department's motion for judgment on the pleadings (Doc. 15) is **GRANTED**;
- 2) Plaintiff's claims against Defendants Springfield Township Police Department are **DISMISSED** for lack of prosecution;
- 3) The issue of the status of service of process to Defendant Elmwood Fire Department is hereby **RECOMMITTED** to the Magistrate Judge with instructions to file a supplemental report analyzing the issue in light of the notice on the docket indicating that service was returned executed (Doc. 30); and
- 4) The related Motion to Clarify Parties filed by the City of Cincinnati Fire Department (Doc. 26) is **RECOMMITTED** for further consideration, as its disposition is related to the outcome of issue of service of process to the Elmwood Fire Department.

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<sup>1</sup> Plaintiff's objections (Doc. 31) do not address the issue of service of process to the Elmwood Fire Department.

**IT IS SO ORDERED.**

Date: 2/11/2020

  
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Timothy S. Black  
United States District Judge